

**BOROUGH OF FAIR HAVEN  
ORDINANCE 2019-10**

**AN ORDINANCE OF THE BOROUGH OF FAIR HAVEN, COUNTY OF MONMOUTH, STATE OF NEW JERSEY, NEW SECTION ENTITLED "LIMITING USE OF SINGLE-USE PLASTIC BAGS, POLYSTYRENE FOAM CONTAINERS AND PLASTIC STRAWS BY BUSINESSES"**

**1.1 INTENT.**

The intent of this Ordinance is to adopt regulations relating to and limiting the use of single-use plastic bags, polystyrene foam containers and plastic straws by businesses in the Borough of Fair Haven. The regulations are intended as necessary and proper steps by the Borough to address a significant global problem relating to the sale and use of single-use plastic bags, polystyrene foam containers and plastic straws; to further incentivize the use of reusable bags at businesses, and, ultimately, to protect the environment, wildlife, and the public health, welfare, and safety.

**1.2 DEFINITIONS.**

The following definitions apply to this Chapter:

**"BUSINESS OR STORE"** means any retail establishment that engages in the retail sale of goods and products. The definition includes, but is not limited to pharmacies, supermarkets, grocery stores, convenience stores, clothing stores, surf shops, dry cleaners, food marts, and food service establishments.

**"COMPLIANT BAG"** means recyclable paper carry-out bags and reusable bags as defined below:

A. A recyclable paper carry-out bag is a paper bag that meets all of the following minimum requirements:

- (1) It is one-hundred-percent recyclable overall and contains a minimum of 40% post-consumer recycled material;
- (2) It can be composted; and
- (3) It displays the words "recyclable" and/or "reusable" in a highly visible manner on the outside of the bag.

B. A reusable bag is a bag made of cloth or other washable fabric with handles that are specifically designed and manufactured for multiple reuse and meets all of the following additional requirements:

1. It has a minimum lifetime of 125 uses;
2. It can carry a minimum of 22 pounds;
3. It is machine washable or is made from a material that can be cleaned or disinfected;
4. It does not contain lead, cadmium, or any other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations; and
5. If made of plastic, it is a minimum of at least 2.25 mils thick

**"CUSTOMER"** means any person purchasing goods or services from a business or store.

**"EFFECTIVE DATE"** shall be defined as the date on which final adoption and publication in accordance with the law are complete.

**"ENFORCEMENT DATE"** shall be 180 days from the Effective Date.

**"FOOD SERVICE ESTABLISHMENT"** means any establishment which serves made-to-order food or beverages for dine-in, takeout, or delivery.

**"OPERATOR"** means the person in control of, or having the responsibility for, the operation of a business or store, which may include, but is not limited to, the owner of the business or store.

**"PERSON"** means any natural person, firm, corporation, partnership, or other organization or group, however organized.

**"POLYSTYRENE FOAM CONTAINER"** means any disposable food packaging used to provide customers with prepared food or take-out food, which contains polystyrene foam in any part of such packaging. This definition specifically exempts the following from the category of polystyrene foam containers:

1. Meat and fish trays for raw or butchered meat, including poultry, or fish that is sold from a refrigerator or similar retail appliance; or
2. Polystyrene foam food service food containers used for prepackaged food that have been filled and sealed prior to receipt by the store.

**"POST-CONSUMER RECYCLED MATERIAL"** means a bag constructed of a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. "Post-consumer recycled material" does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.

**"PREPARED FOOD"** means food or beverages which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises or facilities of the retail food vendor. Prepared food does not include raw, butchered meats, fish and/or poultry which are sold from a butcher case or similar appliance. Prepared food may be eaten either on or off premises or away from the facilities or the retail food vendor. Prepared food includes take-out food.

**"PRODUCE BAG OR PRODUCT BAG"** means a very thin bag without handles used exclusively to carry produce, meats, or other food items to the point of sale inside a store or, for reasons of public health and safety, to prevent such food items from coming into direct contact with other purchased items.

**"RECYCLABLE"** means material that can be sorted, cleansed, and reconstituted using available recycling collection programs for the purpose of reusing the altered, incinerated, converted, or otherwise thermally destroyed solid waste generated therefrom.

**"RETAIL"** means the sale of goods and products for use and/or consumption.

**"SINGLE-USE, PLASTIC CARRYOUT BAG"** means any bag made predominantly of plastic derived from either petroleum or a biologically based source, such as corn or other plant sources, that is provided by an operator of a business or store to a customer at the point of sale. The term includes compostable and biodegradable bags but does not include reusable bags, produce bags, or product bags. This definition specifically exempts the following from the category of "single-use plastic carry-out bag":

- A. Bags provided by operators and used by consumers inside a business or store to:
  1. Package bulk items, such as fruit, vegetables, nuts, grains, candies, or small hardware items;
  2. Contain or wrap frozen foods, meat, or fish, whether packaged or not;
  3. Contain or wrap flowers, potted plants or other items where dampness may be an issue;

4. Contain unwrapped prepared foods or bakery goods; or
  5. Pharmacy prescription bags.
- B. Newspaper bags, door-hanger bags, laundry and/or dry-cleaning bags, or bags sold in packages containing multiple bags intended for use as food storage bags, garbage bags, yard waste bags, or pet waste bags.

### **1.3 REGULATION OF SINGLE-USE, PLASTIC CARRYOUT BAGS, POLYSTYRENE FOAM CONTAINERS AND PLASTIC STRAWS.**

No business or store shall provide any single-use, plastic carryout bags, polystyrene foam containers and/or plastic straws to a customer at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting products or goods out of the business or store, except as otherwise provided in this Chapter. In addition, no business or store shall provide customers any other types of carryout bags that don't meet the definition of Compliant Bag as defined in this Chapter.

### **1.4 REGULATION OF COMPLIANT BAGS.**

Nothing in this Chapter shall require any business or store to provide compliant bags nor restrict their ability to charge for the purchase of said items. A business or store shall not charge a fee for bags of any kind provided by the customer.

### **1.5 ENFORCEMENT.**

This Ordinance shall take effect on the Effective Date, and all Businesses and Stores must be in compliance with same by the Enforcement Date.

Any business or store found not to be in compliance with this Ordinance on the Enforcement Date, and which has not made application to the Borough Council for an extension as provided in this section, shall be in violation of this Ordinance and subject to the violations and penalties prescribed herein.

The Borough Council may, in the Borough's sole discretion, grant an extension of time for compliance with the Ordinance when a business or store makes application for an extension prior to the Enforcement Date. Upon such application, the Borough shall consider whether the business or store has made adequate good faith efforts to comply with this Ordinance by the Enforcement Date and has been unable do so for compelling reasons. The Borough may, in its sole discretion, grant an extension for not longer than 180 additional days from the Enforcement Date.

### **1.6 VIOLATIONS AND PENALTIES.**

Each business or store violating any of the provisions of this section shall, upon conviction thereof in municipal court, be subject to a penalty of up to \$500 for a first offense, up to \$1,000 for a second offense, and up to \$2,500 for a third offense. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate, and distinct offense.

### **1.7 SEVERABILITY.**


In the event that any clause, section, provision, paragraph, or sentence of this Ordinance is deemed to be invalid or unenforceable for any reason, the remaining provisions of the Ordinance not affected by said invalidity shall remain in full force and effect.

### **1.8 REVERSE PREEMPTION.**

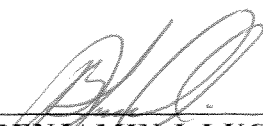
This article shall be null and void on the day that statewide legislation goes into effect incorporating either the same or substantially similar provisions as are contained in this article or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the Borough of Fair Haven. The Borough of Fair Haven Council may determine by resolution whether or not identical or substantially similar statewide legislation or pertinent preempting state or federal regulations have been enacted for the purposes of triggering the provisions of this section.

Introduced: 6/24/2019  
Amended and Reintroduced: 7/29/2019  
Adopted: 8/19/2019

**ATTEST:**

  
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**ALLYSON M. CINQUEGRANA, RMC/CMR**  
**BOROUGH CLERK**

**APPROVE:**

  
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**BENJAMIN J. LUCARELLI**  
**MAYOR**